

### **III. REMARKS**

Claim 1 has been amended. Dependent claim 6 has been added. Claims 1 - 6 remain pending in the instant application.

Claims 2 - 5 were objected to for informalities relating to claim 1. Claim 1 has been amended to overcome the objection.

Claims 1 - 5 were rejected under 35 U.S.C. 102(b) as being anticipated by Kuypers (U.S. Patent 4,754,716).

Claim 1 recites a drain panel assembly adapted to control water leaking through a basement wall and/or entering a basement through the interface of a basement wall and a supporting footing. The assembly is claimed comprising a plastic drain panel having an upper panel section which extends vertically up from a lower skirt section, (adjacent the basement wall and closely-spaced therefrom by a means of spacer-means integral with a rear surface of the upper panel section to admit water running down the basement wall into the lower skirt section). The lower skirt section is claimed extending outwardly from said upper panel section away from said wall and downwardly into contact with the supporting footing section, so that the outer surface of the skirt faces away from the panel section, to form a longitudinal water conduit extending along the length of the footing and open to the wall/footing interface to receive water therefrom. The water conduit is claimed being provided with a plurality of spaced drain openings for draining water therefrom outwardly over the adjacent footing surface into a drain tile.

Kuypers (U.S. Patent 4,754,716) discloses product 30 inserted against foundation 31 and footing 32 before floor 33 has been poured. Product 30 has a barrier 41 having conduit portions 42. Barrier 41 has an upper diverter portion 44 and a lower diverter portion 45, each having conduit portions that allow water to flow from wall 38 through fill 36 to drain 34.

Nowhere in Kuypers (U.S. Patent 4,754,716) is there a disclosure or suggestion of a lower skirt section extending outwardly from an upper panel section away from said wall and downwardly into contact with the supporting footing section (so that the skirt's outer surface faces away from the panel section) to form a longitudinal water conduit extending along the length of the footing as claimed in claim 1. Instead, Kuypers (U.S. Patent 4,754,716) discloses barrier 41 having conduit portions 42 with no disclosure or suggestion of a lower skirt section extending outwardly from an upper panel section away from said wall and downwardly into contact with the supporting footing section as claimed in claim 1. The outer surface of portion 45 does not face generally away from portion 44. Instead, Kuypers (U.S. Patent 4,754,716) discloses barrier 41 having conduit portions 42 with no disclosure or suggestion of a lower skirt section extending outwardly from an upper panel section away from said wall and downwardly into contact with the supporting footing section to form a longitudinal water conduit extending along the length of the footing as claimed in claim 1. Instead, Kuypers (U.S. Patent 4,754,716) discloses barrier 41 that has an upper diverter portion 44 and a lower diverter portion 45, each having conduit portions that allow water to flow from wall 38 through fill 36 to drain 34 with no disclosure or suggestion of a longitudinal water conduit as claimed in claim 1. For the reasons set forth, the features of claim 1 are neither disclosed or

suggested by Kuypers (U.S. Patent 4,754,716). Accordingly, claim 1 is patentable over Kuypers (U.S. Patent 4,754,716).

Claims 2 - 5 depend upon claim 1. For the reasons set forth above relating to claim 1, the features of claims 2 - 5 are neither disclosed or suggested by Kuypers (U.S. Patent 4,754,716). Accordingly, claims 2 - 5 are patentable under 35 U.S.C. 102(b) over Kuypers (U.S. Patent 4,754,716).

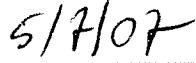
For all of the foregoing reasons, it is respectfully submitted that all of the claims now present in the application are clearly novel and patentable over the prior art of record, and are in proper form for allowance. Accordingly, favorable reconsideration and allowance is respectfully requested. Should any unresolved issues remain, the Examiner is invited to call Applicants' attorney at the telephone number indicated below.

The Commissioner is hereby authorized to charge payment for any fees associated with this communication or credit any over payment to Deposit Account No. 16-1350

Respectfully submitted,

  
\_\_\_\_\_  
Janik Marcovici

Reg. No. 42,841

  
\_\_\_\_\_  
Date

Perman & Green, LLP  
425 Post Road  
Fairfield, CT 06824  
(203) 259-1800  
Customer No.: 2512

#### CERTIFICATE OF ELECTRONIC FILING

I hereby certify that this correspondence is being transmitted electronically, on the date indicated below, addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Date: 5/7/07

Signature: Shauna Murphy  
Shauna Murphy  
Person Making Deposit